



9200 / 1656

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

DE SANTIS et al.

Atty. Ref.: 4865-91; Confirmation No. 2737

Appl. No. 10/590,936

TC/A.U.

Filed: August 28, 2006

Examiner:

For: ANTI-HUMAN TENASCIN MONOCLONAL ANTIBODY

* * * * *

September 23, 2008

MAIL STOP PCT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: OFFICE OF PCT LEGAL ADMINISTRATION

Sir:

**RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICIAL ACTION (MPEP §711.03(c) and 37 CFR §1.181)**

A previous Petition filed 11 August 2008 in this matter was dismissed in a Decision dated 15 September 2008, noting the "petitioner has not provided a copy of a (docketing) record showing all application docketed for response on 30 July 2007 (since 29 July 2007 was a Sunday)."

Submitted with this renewed Petition are docketing records for Sunday, 29 July 2007 and Saturday, 28 July 2007.

Applicants hereby request (petition) to withdraw the holding of abandonment set forth in the Notification of Abandonment, dated July 11, 2008, (copy attached) for failure to respond timely to the Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures dated May 29, 2007. The reason for this

request (petition) is that the applicants' undersigned representative never received through regular mail channels a copy of the Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures. Thus, withdrawal of the abandonment holding is believed to be in order and such action is solicited. (See MPEP §711.03(c).I.A.)

In support of this request, the applicants' undersigned representative notes the following:

- (1) Upon receipt of the Notice of Abandonment dated July 11, 2008, it was observed that the subject application was abandoned because no reply was received in response to the Notification allegedly mailed on May 29, 2007.
- (2) Upon receipt of the Notice of Abandonment dated July 11, 2008, a review of the USPTO's PAIR system indicated that a Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures was allegedly mailed on May 29, 2007. However, after a careful review of the records, it became apparent that the applicants' representatives (including the undersigned) never received the Notification.
- (3) The undersigned has searched the file jacket and docket records relating to the instant application, and both evidence that the Notification dated May 29, 2007 was not received. A copy of the relevant computer-based docket record relating to this application is attached as Exhibit A evidencing that the Notification dated May 29, 2007 was not in fact received by undersigned. The attached docket record, last updated March 27, 2008, does not indicate any Notification having been received, but instead indicates a Call-Up to be done on September 28, 2008 to see if an Office Action or filing receipt has been received. Thus, the attached docket record clearly indicates that the Notification dated May 29, 2007 was not received by applicant's representatives.

(4) The Nixon & Vanderhye (“N&V”) Docketing System and Its Reliability

Applicant’s representative, N&V has employed for at least the previous twenty years a docketing system whereby all correspondence received from the U.S. Patent and Trademark Office (“USPTO”) through the US Postal Service is reviewed initially by a Docketing Specialist who enters the due date associated with such correspondence into a computer-based docket record. Another Docketing Specialist will verify the accuracy of the data entered into the computer-based docket record and will also manually enter into a separate paper Master Docket record the final due date associated with the USPTO correspondence. Thus, N&V docket records maintain the due date for patent applications in both electronic and paper form. Moreover, these docketing records collectively include, but are not limited to, the application serial number, the attorney docket number, the mail date of the correspondence and the due date for the response to such correspondence.

The docketing system described above has proven to be highly reliable during the undersigned’s tenure at N&V which began in 1985.

In this particular instance, had the USPTO correspondence of May 29, 2007 actually been received by N&V through the US Postal Service, there would have been an entry into the computer-based docket record. In addition, had such correspondence actually been received, an entry in the paper Master Docket record for December 29, 2007 (i.e., the final non-extendible due date for the May 29, 2007 correspondence) would also have been made.

5. The N&V Master Docket Record

As noted above, the N&V Docketing Specialists enter into a paper Master Docket record the final non-extendible due date for any USPTO correspondence received through the US Postal Service. Thus, since the May 29, 2007 correspondence set a non-statutory response due date of two (2) months from its mailing date, the final non-extendible due date would have been entered into the Master Docket record for December 29, 2007.

The Master Docket record for December 29, 2007 is attached hereto as Exhibit B. As can be observed, nowhere in the Master Docket record can a due date be observed attributable to the May 29, 2007 correspondence for the subject application.

In addition, as noted previously, the computer-based docket record (Exhibit A) for the subject application would have had noted receipt of the May 29, 2007 correspondence and its extendible 2-month due date of Sunday, July 29, 2007 (actually due Monday, July 30, 2007). However, as the attached paper Master Docket records for the subject application on Saturday, July 28, 2007, Sunday, July 29, 2007 and Monday, July 30, 2007 reveals, no such information was entered therein.

And, as previously stated, a diligent search of the undersigned's other records related to the subject application, including the file jacket and the contents of the subject application, evidence that for reasons unknown the correspondence of May 29, 2007 was not in fact received by N&V through the US Postal Service.

In view of the facts above, it is respectfully requested that the Notification of Abandonment dated July 11, 2008 be withdrawn.

A formal response to the Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures, namely a sequence listing, is being filed concurrently herewith. As such, there is no need to reissue the Notification with a fresh response due date as all issues are being addressed with the concurrently filed response.

It is believed that no fee is necessary in order to withdraw the abandonment status of this application. However, if the Office deems otherwise, then please charge the fees required per the deposit account charge authorization below.

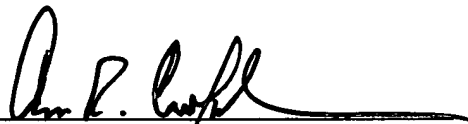
Fee Authorization

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


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JSP	4110-72	11/1604,006	Msg Parts (5X)	2-28-07
HWB	4147-155	10/575,727	Msg Rgmts (5X)	1-8-07
MEN	723-2079	11/1041,109	MSG, PARTS (5X)	2-27-07
RYM	36-1624	10/239,639	Appeal Brief (5X)	3/28/07
AMK	3788-19	11/105,631	Appeal Brief (5X)	2/28/07
MJS	914-199	11/003,342	Appeal Brief (5X) Restarted	
FPP	4040-34	78/804,109	6 MO TM Resp	7/27/07
DJB	1296-6	74/1078,157	Late Renewal Due (F) Drop	
LSN	4949-3	10/066,597	IMO RESP (5X)	2-6-07
LSN	2018-998	11/000,156	IMO RESP (5X)	2/23/07
JSP	4110-29	10/902,277	IMO RESP (5X)	2-27-07
LSN	4949-3	10/066,597	IMO Resp Resp (5X)	Duplicate
PTB	267-84	10/221,038	IMO Resp Resp (5X)	2-1-07
MTW	121-185	10/526,388	IMO RESP (5X)	3/28/07
RYM	2018-803	10/105,963	IMO Resp (5X)	2-2-07
PTB	4520-3	10/291,447	IMO Resp (5X)	2-2-07
HWB	955-338	11/366,835	IMO Resp (5X)	2-7-07
BJS	4093-13	11/165,226	IMO Resp (5X)	2/28/07
BHD	1497-136		New NH Phase	7-25-2007

JULY 29, 2007

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~~ARC 4105-93 11/634,387 MSG parts(5x) 2-27-07~~
~~LCM 5002-4 11/634,204 MSG parts(5x) 1-30-07~~
~~SCS 550-885 11/635,086 MSG parts(5x) 2-28-07~~
~~MJS 5001-2 11/607,099 MSG parts(5x) 7/20/07~~
~~LCM 5002-3 11/634,205 MSG parts(5x) 1-30-07~~
~~HLWB 3572-47 29/250,910 MSG parts(5x) 2-28-07~~
~~USG 4472-19 10/934,765 GMO. RESP FR NAP late 7/30/07~~
~~USG 4472-19 10/934,765 GMO. NTC. Appeal NAP late 7/30/07~~
~~AMK 3638-110 10/751,540 GMO. RESP FR Rce 4/30/07~~
~~AMK 3638-110 10/751,540 GMO. NTC. Appeal Rce 4/30/07~~
~~LSN 36-1674 10/018,485 GMO FR Resp efiled 7-30~~
~~LSN 36-1674 10/018,485 GMO Not Appeal efiled 730~~
~~FPP 4844-4 77/093,406 TM Foreign Filing Dkt~~
~~FPP 4844-3 77/093,305 TM Foreign Filing Dkt~~
~~GLD 183-26 78/962,669 TM GMO. RESP 2-12-07 efiled~~
~~RYM 2018-832 10/759,070 GMO. RESP FR 3/12/07~~
~~RYM 2018-832 10/759,070 GMO. NTC. Appeal NOA Rec'd~~
~~JAR 3691-785 10/981,745 GMO. RESP. FR 4/27/07~~
~~JAR 3691-785 10/981,745 GMO. NTC. Appeal allowed~~
~~RIS 2531-173 10/537,787 GMO. RESP. 7-23-2007~~
~~MJS 123-951 09/722,410 GMO. RESP FR NAP late 7/30/07~~
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~~WFG 4380-194 11/261,595 GMO. RESP. to be efiled 7/30/07 FAXED~~
~~BHD 4396-9 10/512,092 GMO. RESP. FR NAP 6/29/07~~
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~~BVS 620-240 10/364,672 GMO. RESP. 7/19/07~~
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~~LCM 608-446 10/516,622 GMO. RESP. DOP~~
~~JRT 4662-235 10/450,185 GMO. RESP. FR 2/13/07~~
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~~JHN 839-635 10/317,192 GMO. RESP.~~
~~CS 530-654 11/092,984 GMO. RESP. 5/29/07~~
~~JP 4110-29 10/902,377 GMO. RESP. (5x) wrong date~~
~~PTB 4017-28 10/520,361 GMO. RESP. FR Abdn puct~~
~~PTB 4017-28 10/520,361 GMO. NTC. Appeal Abdn puct~~
~~MSK 839-1647 11/017,661 GMO Resp 4/19/07~~
~~LSN 2018-1536 11/603,899 GMO Resp 4/27/07~~
~~ARC 249-318 10/689,843 GMO Resp 4/18/07~~
~~LCM 103-41 10/862,459 GMO Resp 6/29/07~~
~~LSN 2018-990 11/035,135 GMO Resp 4/30/07~~

JULY 30, 2007

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~~DJB 2759-12 75/113,135 Late 8/15 Due (F) Abandon~~
~~FPP 2865-1212 75/1866,504 Late 8-15 Due (F) Drop~~
~~DMB 4662 81 78/727,782 SOW/1st Ext. 7/23/07~~
~~RWA 790-1624 78/1665,423 SOW/1st Ext Aband 7/25/07~~
~~✓FPP 3146-247 77/1094,463 Tm For Filing DDCT~~
~~✓FPP 3146-246 77/1094,426 Tm For Filing DDCT~~
~~RWA 790-1745 77/1094,760 Tm For Filing DDCT~~
~~HWS 2739-4 9/168,217 6 MO Resp 4/30/07~~
~~PTB 141-475 11/600,840 6 MO Resp ddct - vacated -~~
~~✓LEM 687-127 11/10/481,517 6 MO Resp Faxed 7/30/07~~
~~✓MJW 620-204 10/149,085 6 MO. RESP FR 5089.2 5089-2 4/30~~
~~✓MJW 620-204 10/149,085 6 MO. NTC. Appeal 5089.2 Drop P/C~~
~~LSN 461-201 11/289,568 2 MO. QUAYE (F) 3/30/07~~
~~LSN 36-1699 10/399,976 6 MO. RESP. 6-28-07~~
~~MNL 2018-1091 11/127,172 6 MO. RESP FR 3/29/07~~
~~MNL 2018-1091 11/127,172 6 MO. RES NTC Appeal NOA Rec'd~~
~~RAM 233-146 10/543,631 6 MO. RESP. 7/25/07~~
~~JSP 723-1460 10/757,510 6 MO. RESP FR 4/10/07~~
~~JSP 723-1460 10/757,510 6 MO. NTC. Appeal 5/7/07 RCE~~
~~AMK 249-340 10/834,364 6 MO. RESP FR Amct/RCE 4-26~~
~~AMK 249-340 10/834,364 6 MO. NTC. Appeal Amct/RCE 4-26~~
~~AMK 2802-5 9/117,005 6 MO Resp NAP file 4/25/07~~
~~✓BSS 2491-42 10/507,748 6 MO Resp Drop~~
~~✓LSN 2239-19 10/950,514 6 MO FR Resp 4-30-07~~
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~~DJB 141-150 2,378,338 RESP (TM) Due 7/10/07~~
~~RWA 978-112 78/854,157 SOW/1st Ext EXT 7/24/07~~
~~✓MJK 723-1780 29/242,567 Issue Fee 7/27/07~~
~~✓MJK 723-1780 29/242,567 Drawgs Due DDCT~~
~~JRL 2380-737 10/312,392 Issue/Pub Fee 7/25/07~~
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~~PTB 4398-510 29/251,426 CATI/Dec. Due (F) 5/10/07~~
~~CC 925-337 11/384,548 Issue/Publ Fee 6-21-07~~
~~CC 925-337 11/384,548 Drawings Due DDCT~~
~~LSN 2635-319 11/259,008 Issue/Pub Fee Due 8-30~~
~~LSN 2635-319 11/259,008 Drawgs Due 8-30~~
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